



City Council Chambers
3300 Capitol Avenue
Fremont, California

City Council

Bob Wasserman, Mayor
Bob Wieckowski, Vice Mayor
Anu Natarajan
Bill Harrison
Suzanne Lee Chan

City Staff

Fred Diaz, City Manager
Harvey E. Levine, City Attorney
Melissa Stevenson Dile, Deputy City Manager

Dawn G. Abrahamson, City Clerk
Harriet Commons, Finance Director
Marilyn Crane, Information Technology Svcs. Dir.
Daren Fields, Economic Dev. Director
Mary Kaye Fisher, Interim Human Resources Dir.
Annabell Holland, Parks & Recreation Dir.
Norm Hughes, City Engineer
Jill Keimach, Community Dev. Director
Bruce Martin, Fire Chief
Jim Pierson, Transportation & Ops Director
Jeff Schwob, Planning Director
Suzanne Shenfil, Human Services Director
Craig Steckler, Chief of Police
Elisa Tierney, Redevelopment Director

City Council Agenda and Report [Redevelopment Agency of Fremont]

General Order of Business

1. Preliminary
 - Call to Order
 - Salute to the Flag
 - Roll Call
2. Consent Calendar
3. Ceremonial Items
4. Public Communications
5. Scheduled Items
 - Public Hearings
 - Appeals
 - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Other Business
8. Council Communications
9. Adjournment

Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



Addressing the Council

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

Oral Communications

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. **Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak.** Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4080.

The City Council Agendas may be accessed by computer at the following Worldwide Web Address: www.fremont.gov

Information

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website (www.Fremont.gov).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

Availability of Public Records

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the City Council less than 72 hours prior to the meeting will be available for public inspection in specifically labeled binders located in the lobby of Fremont City Hall, 3300 Capitol Avenue during normal business hours, at the time the records are distributed to the City Council.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk
City of Fremont
3300 Capitol Avenue, Bldg. A
Fremont, California 94538
Telephone: (510) 284-4060

Your interest in the conduct of your City's business is appreciated.

NOTICE AND AGENDA OF SPECIAL MEETING CLOSED SESSION

FREMONT CITY COUNCIL

DATE: Tuesday, December 1, 2009

TIME: 6:15 p.m.

LOCATION: City Hall, 3300 Capitol Avenue, Fremont

The City Council will convene a special meeting. It is anticipated the Council will immediately adjourn the meeting to a closed session to confer with and receive advice from its attorney regarding existing litigation in one matter and granting authority to its real property negotiators regarding price and terms of payment, as follows:

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

This Closed Session is authorized by subdivision (a) of Section 54956.9 of the Government Code and will pertain to existing litigation in one matter.

City of Fremont v. Lawrence Anderson, WCAB Oakland 48554

CONFERENCE WITH REAL PROPERTY NEGOTIATORS: This Closed Session is authorized by Government Code Section 54956.8 at the time and place stated above to confer with and grant authority to its real property negotiators regarding:

APN# 519-1010-011-29, approximately 49,453 sq. ft., located at 48815 – 48819 Kato Rd., owned by Kato Associates, a California LP.

APN#'s 419-1010-136-00 and 519-1010-140-00, approximately 72,883 sq. ft., located at 431 and 466 Kato Terrace, owned by Walton CWCA Scott Creek 28, LLC, a Delaware LLC

The negotiating parties shall include the City and each of the property owners identified above.

The Brown Act requires the negotiators (even when not attending the meeting) to be listed in this notice. Those negotiators are:

For the City – (which will be represented at the meeting) Randy Sabado, Real Property Manager; Jim Pierson, Transportation and Operations Director and Harvey Levine, City Attorney.

For the Property Owners – (which will not be represented at the meeting) Norm Matteoni and Fernando Villa.

This Special Meeting is being called by Mayor Wasserman.

AGENDA
FREMONT CITY COUNCIL REGULAR MEETING
DECEMBER 1, 2009
COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A
7:00 P.M.

1. PRELIMINARY

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

2. CONSENT CALENDAR

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.

- 2.1 *Motion to Waive Further Reading of Proposed Ordinances
(This permits reading the title only in lieu of reciting the entire text.)*
- 2.2 *Approval of Minutes – None.*
- 2.3 *PARTIAL RELEASE OF PRIVATE IMPROVEMENT SECURITY, TRACT 7859
Approval of Partial Release of Improvement Security Required By Private
Improvement Agreement for Tract 7859, for Partial Performance of the Completion of
Improvements*

Contact Person:

<i>Name:</i>	<i>Diana Cangco</i>	<i>Norm Hughes</i>
<i>Title:</i>	<i>Civil Engineer II</i>	<i>City Engineer</i>
<i>Dept.:</i>	<i>Community Development</i>	<i>Community Development</i>
<i>Phone:</i>	<i>510-494-4733</i>	<i>510-494-4748</i>
<i>E-Mail:</i>	<i>dcangco@fremont.gov</i>	<i>nhughes@fremont.gov</i>

RECOMMENDATION: Permit the partial release of improvement security, Tract 7859, for private improvements, in the amount of \$396,000, retaining \$263,000 in security until acceptance of all the private improvements by the City Engineer.

2.4 *RESOLUTION AUTHORIZING APPLICATION FOR FEDERAL AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 FUNDING FOR OSGOOD ROAD REHABILITATION PROJECT*

Adopt a Resolution Authorizing the Submittal of an Application to the Metropolitan Transportation Commission for the Federal American Recovery and Reinvestment Act of 2009 Funding for the Osgood Road Rehabilitation Project, City Project No. 8173 (PWC)

Contact Person:

<i>Name:</i>	<i>Jeanne Suyeishi</i>	<i>Norm Hughes</i>
<i>Title:</i>	<i>Associate Civil Engineer</i>	<i>City Engineer</i>
<i>Dept.:</i>	<i>Community Development</i>	<i>Community Development</i>
<i>Phone:</i>	<i>510-494-4728</i>	<i>510-494-4748</i>
<i>E-Mail:</i>	<i>jsuyeishi@fremont.gov</i>	<i>nhughes@fremont.gov</i>

RECOMMENDATION:

- 1. Adopt a resolution authorizing the City Manager or designee to submit an application to the Metropolitan Transportation Commission (MTC) for \$770,000 in funding from the Federal American Recovery and Reinvestment Act of 2009.*
- 2. Appropriate the amount in American Recovery and Reinvestment Act of 2009 funding approved by MTC in the amount of \$770,000 to the Osgood Road Rehabilitation Project, City Project No. 194PWC8173.*

2.5 *ORDINANCE AMENDMENT REGARDING HISTORIC RESOURCES APPEALS*

Public Hearing (Published Notice) to Introduce an Ordinance Amending Fremont Municipal Code Title VIII, Article 19.1 (Historic Resources) to Clarify that the Historical Architectural Review Board is the Initial Review Authority for Appeals of a Determination Regarding a Potential Resource

Contact Person:

<i>Name:</i>	<i>Kelly Diekmann</i>	<i>Jeff Schwob</i>
<i>Title:</i>	<i>Senior Planner</i>	<i>Planning Director</i>
<i>Dept.:</i>	<i>Community Development</i>	<i>Community Development</i>
<i>Phone:</i>	<i>510-494-4540</i>	<i>510-494-4527</i>
<i>E-Mail:</i>	<i>kdiekmann@fremont.gov</i>	<i>jschwob@fremont.gov</i>

RECOMMENDATION:

- 1. Hold public hearing.*
- 2. Find the proposed project exempt from review under the California Environmental Quality Act Guidelines in that the proposed project has no potential for significant effect.*
- 3. Waive full reading and introduce an ordinance amending Fremont Municipal Code Title VIII, Article 19.1, Sections 8-219118, 8-219119 and 8-219137 as shown in Exhibit "A", regarding appeals of Potential Resource determinations and to correct cross-references as specified.*

3. CEREMONIAL ITEMS

- 3.1 Resolution: Recognizing T.G.I.F. Body Shop, Inc. as a Bay Area Green Business in the City of Fremont

4. PUBLIC COMMUNICATIONS

- 4.1 Oral and Written Communications

REDEVELOPMENT AGENCY – The Redevelopment Agency Board will convene at this time and take action on the agenda items listed on the Redevelopment Agency Agenda. [See separate agenda](#) (yellow paper).

PUBLIC FINANCING AUTHORITY – None.

CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR

5. SCHEDULED ITEMS

- 5.1 ORDINANCE AND GENERAL PLAN AMENDMENT REVISING COMMERCIAL, INDUSTRIAL, AND NON-RESIDENTIAL CONDOMINIUM AND DEVELOPMENT STANDARDS - (PLN2008-00189)
Public Hearing (Published Notice) to Introduce an Ordinance Amending Fremont Municipal Code Title VIII, Section 8-22135.1 Regarding Commercial, Industrial and Non-Residential Condominiums, and to Consider a General Plan Amendment to Modify Minimum Development Levels in Transit Oriented Areas

Contact Person:

Name:	Kelly Diekmann	Jeff Schwob
Title:	Senior Planner	Planning Director
Dept.:	Community Development	Community Development
Phone:	510-494-4540	510-494-4527
E-Mail:	kdiekmann@fremont.gov	jschwob@fremont.gov

RECOMMENDATION:

1. Hold public hearing.
2. Find the proposed project exempt from review under the California Environmental Quality Act Guidelines in that the proposed project has no potential for significant effect and is an alteration of existing land use limitations.
3. Adopt a resolution to amend the General Plan as shown in Exhibit "A."
4. Waive the full reading and introduce an ordinance to amend Fremont Municipal Code Title VIII, Chapter 2, Section 8-22135-1 as shown in Exhibit "B" regarding commercial, industrial, and non-residential condominiums.
5. Direct the City Attorney to prepare a summary of the ordinance for publication and direct the City Clerk to publish the summary and post a certified copy of the full text of the ordinance in the City Clerk's Office at least five days before its adoption.

6. REPORT FROM CITY ATTORNEY

- 6.1 Report Out from Closed Session of Any Final Action

7. OTHER BUSINESS

7.1 EMINENT DOMAIN HEARING - KATO ROAD GRADE SEPARATION PROJECT, PWC 8697

Consideration of Adoption of Resolution of Necessity Authorizing Filing of Eminent Domain Action to Acquire Properties Located at 400-472 Kato Terrace and 48815-48819 Kato Road for the Kato Road Grade Separation Project

Contact Person:

Name:	Randy Sabado	Jim Pierson
Title:	Real Property Manager	Director
Dept.:	Community Development	Transportation & Operations
Phone:	510-494-4715	510-494-4722
E-Mail:	rsabado@fremont.gov	jpierson@fremont.gov

RECOMMENDATION:

1. Conduct a hearing
2. Adopt a Resolution of Necessity making the findings, determine that the public interest and necessity require the acquisitions of the subject properties, and authorize the commencement of eminent domain proceedings.

8. COUNCIL COMMUNICATIONS

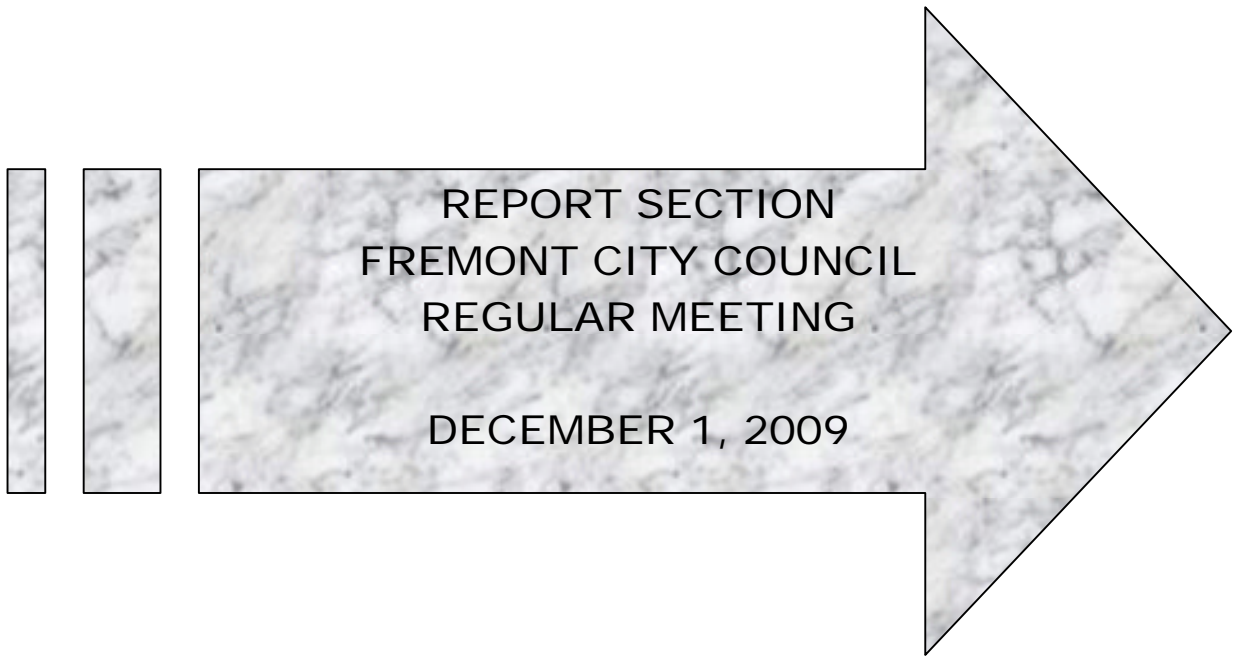
- 8.1 Council Referrals

8.1.1 COUNCILMEMBER WIECKOWSKI REFERRAL: Develop an Ordinance for City Council Consideration Prohibiting the Use of Polystyrene Foam Disposable Food Packaging.

Direct staff to develop an Ordinance for City Council consideration prohibiting the use of polystyrene foam disposable food packaging and requiring the use of environmentally preferable food packaging by retail food vendors and restaurants effective January 1, 2011.

8.2 Oral Reports on Meetings and Events

9. ADJOURNMENT



REPORT SECTION
FREMONT CITY COUNCIL
REGULAR MEETING

DECEMBER 1, 2009

***2.3 PARTIAL RELEASE OF PRIVATE IMPROVEMENT SECURITY, TRACT 7859**
Approval of Partial Release of Improvement Security Required By Private Improvement Agreement for Tract 7859, for Partial Performance of the Completion of Improvements

Contact Person:

Name:	Diana Cangco	Norm Hughes
Title:	Civil Engineer II	City Engineer
Dept.:	Community Development	Community Development
Phone:	510-494-4733	510-494-4748
E-Mail:	dcangco@fremont.gov	nhughes@fremont.gov

Executive Summary: The purpose of this report is to request that the City Council approve the partial release of improvement security for faithful performance of the completion of the private streets for Tract 7859. The improvement security was furnished by the subdivider of Tract 7859, Fremont Niles, LLC, in accordance with the "Improvement Agreement for Private Street, Tract 7859," approved by Council on September 2, 2008. The subdivider has substantially completed the required private street improvements and has requested a release of \$396,000 from the bond amount of \$659,000, with the remaining \$263,000 to be held until acceptance of the tract improvements.

BACKGROUND: Tract 7859 is located on the south side of Niles Boulevard between Linda Drive and Carnation Way in the Niles Planning Area. This project consists of 27 single family detached homes. The final map, agreements for construction of the public and private street improvements, and offers of dedication of land were approved by the City Council on September 2, 2008.

The private (on-site) improvements required by the subdivision plans and contained in the Private Improvement Agreement have been substantially completed. Remaining improvements to be completed include concrete repair, lighting, landscaping, and irrigation. Since the work is not 100% complete, the on-site tract improvements are not ready to be accepted by the City Engineer. The amount of the bond submitted as security for the construction of the on-site improvements is \$659,000.

Discussion: The developer has requested a partial release of the security held for the completion of the private improvements based upon substantial completion of the required improvements. Standard City procedure is to recommend acceptance of the private improvements by the City Engineer once all improvements are satisfactorily completed. After acceptance, the entire amount of each improvement security can be returned and a new one-year warranty bond submitted in its place. In the present case, the majority of the private improvements for this tract have been substantially completed, but are not ready for final inspections and acceptance.

Section 8-1426, Financial Guarantees, of the Fremont Municipal Code (Subdivision Ordinance) provides, in relevant part, that: "The Council may permit the partial release of the security upon the partial performance of the act or the acceptance of the work as it progresses." If the Council permits, a partial release of the improvement security may be made prior to acceptance of the improvements by the City Engineer. The developer has asked the City Council to permit the partial release of improvement security submitted for completion of the required private streets and other on-site improvements shown

on the approved plans and included in the bond guaranteeing the completion of the on-site improvements.

City construction staff has been inspecting the project during construction and has determined the subject improvements are substantially complete. Based upon the verifiable progress of construction, staff recommends a partial release of improvement security for the private (on-site) improvements, with the balance held until final inspections and acceptance by the City Engineer.

In accordance with the Subdivision Map Act, a one-time reduction in the improvement security can be considered if the cost of the work for the remaining improvements does not exceed 20% of the original bond amount, and the resulting security to be retained can be 200% of the cost of the remaining work.

The amount estimated for completion of the private on-site improvements is about \$131,500, or 20% of the original bond amount; 200% of the estimated cost for completion of the remaining improvements is approximately \$263,000. The amount of the bond recommended for release is \$396,000, with \$263,000 in security retained until completion of the unfinished improvements and acceptance of all improvements.

FISCAL IMPACT: None.

ENVIRONMENTAL REVIEW: None.

ENCLOSURE: [Informational Item 1: Copy of Council report - Approval of Final Map Tract 7859 at 35601 Niles Boulevard, Fremont Niles, LLC](#)

RECOMMENDATION: Permit the partial release of improvement security, Tract 7859, for private improvements, in the amount of \$396,000, retaining \$263,000 in security until acceptance of all the private improvements by the City Engineer.

***2.4 RESOLUTION AUTHORIZING APPLICATION FOR FEDERAL AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 FUNDING FOR OSGOOD ROAD REHABILITATION PROJECT**

Adopt a Resolution Authorizing the Submittal of an Application to the Metropolitan Transportation Commission for the Federal American Recovery and Reinvestment Act of 2009 Funding for the Osgood Road Rehabilitation Project, City Project No. 8173 (PWC)

Contact Person:

Name:	Jeanne Suyeishi	Norm Hughes
Title:	Associate Civil Engineer	City Engineer
Dept.:	Community Development	Community Development
Phone:	510-494-4728	510-494-4748
E-Mail:	jsuyeishi@fremont.gov	nhughes@fremont.gov

Executive Summary: The purpose of this report is to request approval to submit an application to the Metropolitan Transportation Commission (MTC) for funding from the federal American Recovery and Reinvestment Act of 2009 (ARRA) in the amount of \$770,000 for the Osgood Road Rehabilitation Project, City Project No. 8173(PWC). Staff is also requesting, when it is received, to appropriate the ARRA fund amount of \$770,000 to the Osgood Road Rehabilitation Project.

BACKGROUND: On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009, enacting the \$787 billion economic recovery package. The Metropolitan Transportation Commission estimated that roughly \$150 million would be available for the region through the Surface Transportation Program. Further, the City's share was determined by the MTC to be \$4,010,000. In addition, a Fund Exchange Agreement with the Alameda County Congestion Management Agency (CMA) provided the City with additional federal funds in the amount of \$1,897,000 (in exchange for \$1,802,150 in Proposition 1B local funds). Therefore, the City submitted the application to the MTC reflecting the Local Streets and Road allocation formula amount plus the fund exchange amount, for a total of \$5,907,000. These Tier 1 ARRA funds were appropriated by the City Council, at the April 7, 2009 meeting, to the 2009 Citywide Asphalt Overlay Project, City Project No. PWC (8234-H).

Subsequent to the April 7, 2009 meeting, \$770,000 of additional Tier 2 ARRA funds became available to the City, in addition to the original amount of \$5,907,000. Based on the Engineer's Estimate, staff believed these additional funds could be used for the overlay project. However, due to favorable bids, these additional funds are not needed for the overlay project.

Many local agencies have received favorable bids on projects with ARRA funding. Due to this, MTC proposed a Cost Savings Plan that will redirect the funds to other Local Streets and Road system preservation projects, such as Osgood Road. Osgood Road is a candidate project to receive these funds since the project has already received its federal environmental clearance and right-of-way certification. CMA has notified the City that project sponsors who can submit a complete Request for Authorization for Construction Package to the Department of Transportation by December 15, 2009, should be able to receive an allocation from the ARRA cost savings. Staff will be able to meet this deadline for the Osgood Road project.

DISCUSSION/ANALYSIS: Osgood Road has a Pavement Condition Index (PCI) of 26 between Washington Boulevard and Blacow Road, and 49 between Blacow Road and Auto Mall Parkway. Streets with a PCI between 26 and 49 are considered “poor” and the appropriate rehabilitation treatments are performing localized base repairs where the pavement base material has failed, and grinding and overlaying the existing pavement surface. Staff recommends applying the full allocation in the amount of \$770,000 to the Osgood Road Rehabilitation Project, Project No. PWC 8173, for the base repair and overlay work. This funding would extend the life of the street, reduce the cost of future maintenance and would leave Osgood Road with a new pavement surface from curb to curb.

FISCAL IMPACT: This additional funding will allow this project to proceed sooner than would have otherwise been the case without placing additional demands on other City resources.

ENVIRONMENTAL REVIEW: On December 21, 2004, the Department of Transportation along with the Federal Highway Administration (FHWA) determined that the Osgood Road project will have no significant impact on the environment. The Finding of No Significance (FONSI) was based on the Environmental Assessment/Initial Study (EA/IS) and was determined to adequately and accurately address the environmental issues and impacts of the proposed project. The EA/IS and Draft Mitigated Negative Declaration (PLN 2004-00084) were prepared and circulated as a joint environmental project to respond to both State California Environmental Quality Act (CEQA) criteria and Federal National Environmental Protection Act (NEPA) environmental criteria. City Council adopted the draft mitigated negative declaration and approved the mitigation monitoring plan at the March 23, 2004 City Council meeting. On November 10, 2009, the Department of Transportation revalidated the original environmental document and determined that no further documentation needs to be prepared for this project.

ENCLOSURE: [Draft resolution](#)

RECOMMENDATION:

1. Adopt a resolution authorizing the City Manager or designee to submit an application to the Metropolitan Transportation Commission (MTC) for \$770,000 in funding from the Federal American Recovery and Reinvestment Act of 2009.
2. Appropriate the amount in American Recovery and Reinvestment Act of 2009 funding approved by MTC in the amount of \$770,000 to the Osgood Road Rehabilitation Project, City Project No. 194PWC8173.

***2.5 ORDINANCE AMENDMENT REGARDING HISTORIC RESOURCES APPEALS**
Public Hearing (Published Notice) to Introduce an Ordinance Amending Fremont
Municipal Code Title VIII, Article 19.1 (Historic Resources) to Clarify that the Historical
Architectural Review Board is the Initial Review Authority for Appeals of a Determination
Regarding a Potential Resource

Contact Person:

Name:	Kelly Diekmann	Jeff Schwob
Title:	Senior Planner	Planning Director
Dept.:	Community Development	Community Development
Phone:	510-494-4540	510-494-4527
E-Mail:	kdiekmann@fremont.gov	jschwob@fremont.gov

Executive Summary: The proposed ordinance amendment removes ambiguity regarding the appeal process for the determination that a building or structure is a Potential Register Resource. The amendment ensures that the Historical Architectural Review Board (HARB) is the initial decision maker on an appeal of a staff level determination with a second level of appeal to the City Council. The proposed ordinance also makes other corrections to cross-references in the Historic Resources ordinance.

BACKGROUND: The City Council approved a wholesale update of the Historical Resources Ordinance in 2007 that identified three categories of consideration for structures greater than 50 years old within Fremont. The categories are Possible Register Resource, Potential Register Resource, and Fremont Register Resource. Staff provides the initial determination of whether a Possible Register Resource is a Potential Register Resource. The existing ordinance includes a limited appeal provision (Section 8-219118) for an applicant to appeal a staff level determination classifying a building or structure as a Potential Register Resource. However, the current language for the limited appeal process does not specify HARB's involvement in such a determination. The proposed amendment includes HARB in the limited appeal process as was intended at the time the 2007 Historical Resource Ordinance was established.

HARB voted 5-0 in favor of supporting the zoning text amendment. The Planning Commission voted 6-0-0-1 in favor of the amendment.

DISCUSSION/ANALYSIS: The existing ordinance includes a limited appeal provision (Section 8-219118) for an applicant to appeal a staff level determination classifying a building or structure as a Potential Register Resource. However, the current language for the limited appeal process does not specify HARB's involvement in such a determination. The proposed amendment includes HARB in the limited appeal process as was intended at the time the 2007 Historical Resource Ordinance was established.

The proposed ordinance also corrects an internal cross-reference to expedited review applicability and procedure in Section 8-219119, as well as reference to appeals procedures in Section 8-219137.

HARB considered the item at a September 3, 2009 public hearing and recommended approval. The Planning Commission considered the item at its November 12, 2009 meeting and recommended approval. There were no speakers at either public hearing. A newspaper display advertisement was published in the Tri-City Voice on October 28, 2009 for citywide public hearing notice.

ENVIRONMENTAL REVIEW: The project is exempt from the California Environmental Quality Act per guideline 15061(b)(3), no potential for significant effect. The amendment does not alter the protection of resources and merely modifies the administrative process for determining the classification.

ENCLOSURE: [Draft Ordinance](#)

RECOMMENDATION:

1. Hold public hearing.
2. Find the proposed project exempt from review under the California Environmental Quality Act Guidelines in that the proposed project has no potential for significant effect.
3. Waive full reading and introduce an ordinance amending Fremont Municipal Code Title VIII, Article 19.1, Sections 8-219118, 8-219119 and 8-219137 as shown in Exhibit “A”, regarding appeals of Potential Resource determinations and to correct cross-references as specified.

5.1 ORDINANCE AND GENERAL PLAN AMENDMENT REVISING COMMERCIAL, INDUSTRIAL, AND NON-RESIDENTIAL CONDOMINIUM AND DEVELOPMENT STANDARDS - (PLN2008-00189)

Public Hearing (Published Notice) to Introduce an Ordinance Amending Fremont Municipal Code Title VIII, Section 8-22135.1 Regarding Commercial, Industrial and Non-Residential Condominiums, and to Consider a General Plan Amendment to Modify Minimum Development Levels in Transit Oriented Areas

Contact Person:

Name:	Kelly Diekmann	Jeff Schwob
Title:	Senior Planner	Planning Director
Dept.:	Community Development	Community Development
Phone:	510-494-4540	510-494-4527
E-Mail:	kdiekmann@fremont.gov	jschwob@fremont.gov

Executive Summary: This is to consider a General Plan Amendment (GPA) and Zoning Text Amendment (ZTA) for minimum development intensities and development of commercial, industrial and non-residential condominiums is in response to the City's interest in supporting Transit Oriented Development (TOD) principles near transit. The ZTA modifies the existing commercial and industrial condominium conversion standards to address the appropriateness, design, and operational characteristics of condominium developments. The ZTA provisions also address recent development trends for retail/commercial condominiums by including requirements for associations and consideration of the functionality of the development as a shopping center.

The Planning Commission voted 5-1 in favor of the staff recommendation with one change to the zoning text amendment recommendation. The Planning Commission recommends deleting the requirement that the developer deposit funds with the property owners association to cover the first five years of maintenance.

BACKGROUND: At the October 2, 2007 City Council meeting, the City Council considered the option of establishing an urgency ordinance restricting the creation of condominiums or subdivision of property and to limit low intensity uses in the Warm Springs BART Station Area. The City Council expressed concerns about long range planning for appropriate uses and ensuring development patterns that supported future intensification and TOD principles. The City Council declined to adopt the urgency ordinance, but adopted Resolution No. 2007-73 providing notice of the intent to adopt amended development standards to limit fractionalized ownership patterns within ½ mile of BART stations. The motion also provided direction to staff to consider additional interim measures and design guidelines supporting TOD principles. The proposed GPA and ZTA are implementing measures proposed by staff in response to City Council direction from Fall 2007.

In addition to the long term TOD concerns, the City has seen a development trend to create commercial and retail condominiums. The creation of commercial/retail condominiums is a recent trend that the current condominium ordinance does not fully address. In particular, these types of condominiums present special challenges for long term sustainability and cohesion within shopping centers. Currently,

individual projects are evaluated on a case-by-case basis with customized conditions of approval to address design and operational issues.

DISCUSSION/ANALYSIS: The General Plan Amendment (GPA) to the Land Use Element establishes minimum floor area ratio (FAR) development requirements for new development. The GPA would apply to the Central Business District (CBD) and in Transit Oriented Development (TOD) areas within ½ mile of an existing or future BART station and the Centerville Train Station. The GPA requires development to achieve at least 90% of the allowable FAR of a site through single or multiple phases of development and discourages low intensity employment uses.

The Zoning Text Amendment (ZTA) modifies the current commercial and industrial condominium ordinance (Title VIII, Section 8-22135.1) to update the development standards, requirements for Covenants, Conditions, and Restrictions (CC&Rs), and findings for approval. The ZTA is broader in scope than the GPA in that it addresses concerns about ongoing operations, general building issues, and site conditions. Of specific concern are the potential difficulties of promoting successful retail use within condominium developments over time. The ZTA will apply to all new condominium or conversion projects within commercial or industrial zoning districts citywide.

Project Analysis:

General Plan Conformance:

The proposed GPA and ZTA support a number of crosscutting goals and policies for the City's long term economic vitality. The measures support the diversified economic needs of the City of appropriate land use planning and operational standards. It includes standards for appropriate development intensities that support transit infrastructure investments and provisions that shopping center and industrial park condominium projects provide assurances for their long term design and operational viability and success. The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

LAND USE GOAL 7: DEVELOPMENT PLANS WHICH CONSIDER SPECIAL SITE CONSTRAINTS AND OPPORTUNITIES

Policy LU 7.8: The Warm Springs BART Specific Plan Study Area... is identified as a Study Area. For these areas, all proposed uses shall be reviewed for their potential to further or hinder the achievements of the goals of the study process. Uses which have no potential for significant conflict with any potential recommended land use recommendations of the study will be allowed under existing land use regulations until such time as the proposed study or specific plan is completed and new land use designations are adopted.

Analysis: The City adopted a resolution in 2003 supporting Transit Oriented Development and smart growth initiatives of MTC Resolution 3434. The City accepted in 2004 the Warm Springs BART Area Specific Plan Existing Conditions Report www.fremont.gov/planning [plans and

policies link]. To date, the Specific Plan has not been prepared beyond the Existing Conditions. The proposed GPA establishes polices for minimum development levels that are supportive of diversified employee intensive uses and Transit Oriented Development goals. The ZTA establishes a framework to consider the appropriateness of fractionalized ownership that may hinder the far-reaching goals of TOD development and development intensity.

LAND USE GOAL 3: SUFFICIENT INDUSTRIAL LAND TO PROVIDE A DIVERSIFIED INDUSTRIAL BASE TO MEET THE EMPLOYMENT NEEDS OF THE CITY'S PRESENT AND FUTURE WORKFORCE (*SEE ALSO LOCAL ECONOMIC GOAL 4*)

Policy LU 3.6: Floor Area Ratio (FAR) shown in Table 3-6 are thresholds which shall be applied to all industrial projects, at the time of project construction. Floor Area Ratios are the ratio of gross building area (exclusive of a parking structure) to net lot area. Thresholds indicate the allowed FAR under conventional development...

Analysis: The proposed GPA establishes polices for minimum development levels that are supportive of diversified employee intensive uses and transit oriented development goals. The minimum FAR requirement and preferred type of use are within the currently allowed maximum FAR and range of uses allowed in the applicable zoning districts. The ZTA establishes a framework to consider the appropriateness of fractionalized ownership that may hinder reaching goals of TOD development and employee-intensive development needs of a diversified economic base.

Policy LU 2.6: Development of the CBD should be guided by a design and development plan which identifies a limited core area for very high intensity development, and other subareas as necessary or appropriate. Projects within one-half mile of the BART Station should be high intensity, or be phased and designed so as to not preclude the long-term achievement of a high intensity core area.

Analysis: The proposed GPA establishes polices for minimum development levels that are at least 90% of the allowable FAR. This is supportive of the policy. The GPA minimum FAR standard also supports investment throughout the CBD consistent with the CBD Concept Plan and allowable intensity and types of uses. The ZTA provides design and development standards that support pedestrian oriented development for condominium development and ensures

future goals of intensified uses are considered with new development proposals.

LOCAL ECONOMY GOAL 3:	A HIERARCHY OF WELL DEFINED, VITAL COMMERCIAL AREAS MEETING THE RETAIL SHOPPING, ENTERTAINMENT AND SERVICE NEEDS OF FREMONT RESIDENTS.
Objective LE 3.1:	Viable neighborhood shopping centers meeting the daily convenience shopping needs of City residents.
Policy LE 3.1.1:	Allow for neighborhood shopping centers of sizes and locations that maintain both choice and convenience for shopping as well as sufficient trade area buying power to support quality design, maintenance and merchandising.
Objective LE 3.2:	Thriving community commercial centers whose function is to provide a wide range of goods in a focused, identifiable, pedestrian oriented commercial area.
Policy LE 3.2.1:	Actively promote the revitalization of existing community commercial centers, drawing on the unique and historic features of each community
Objective LE 3.2:	The Central Business District (CBD) as the City's principal specialty-retail, regional office, entertainment, government and cultural center.
Policy LE 3.3.1:	Focus commercial development opportunities in a well defined, pedestrian and transit oriented high intensity core area near the Fremont BART station.

Analysis: The proposed minimum FAR levels and development standards ensure appropriate development intensity exists to support City needs and allow for future intensified development when fractionalized ownership is proposed. The standards promote the long term economic needs of the City by ensuring the development opportunities are realized to their greatest potential as desired and planned by the City. The ZTA provides mechanisms that promote good design and maintenance of condominium developments by requiring professional management and coordination of activities on site for the benefit of the development overall, rather than the individualized needs of one condominium unit. Site assessment of existing conditions for condominium conversions includes consideration of the quality of the existing site and considers potential upgrades and TOD features applicable to the site.

Zoning Regulations:

The City has existing commercial and industrial condominium regulations and the requirement for issuance of a Zoning Administrator Permit as set forth in Fremont Municipal Code Section 8-22135.1.

The last substantive amendment to Section 8-22135.1 was in 1993. The proposed ZTA modifies these existing standards to address recent trends for retail condominiums and the City's desire to promote TOD. The proposed ordinance reformat and modifies the contents of the existing ordinance and incorporates new provisions. The purpose of the ordinance has been updated and expanded to include the following:

Purpose. The purpose of this section is to encourage cohesive development and management of a property when there are both individual and common ownership interests while ensuring that:

- (1) Projects meet physical and visual standards to ensure the public health, safety and welfare, and that purchasers of units in the project are informed as to the physical conditions of the structure and on-site facilities;*
- (2) A property owners' association is established to warrant the continued viability of the project, avoid conditions of neglect and blight, retain aesthetic consistency and conformity, and ensure a mechanism for funding the maintenance and replacement of all structural and operational components of the project, including the structures, common spaces and facilities; and*
- (3) Long term planning for transit oriented development (TOD) opportunities are not undermined by fragmented ownership that is likely to create or perpetuate a pattern of low-scale or underutilized development.*

The major new provisions of the ordinance include:

1. Planning Commission approval of a Conditional Use Permit rather than a Zoning Administrator Permit
2. Specific Conditional Use Permit Findings [Section 8-22509(a),(b),(e),(f),(g)]; including consideration of :
 - applicable project specific circumstances regarding building orientation and arrangement;
 - unit sizes related to intended customary uses consistent with the zoning;
 - adjacent use compatibility; and
 - useful life of the site improvements and buildings.
3. Planned Sign Program for the whole development
4. Covenants, Conditions and Restrictions (CC&Rs) for conveyance of units, operational controls, maintenance, and rehabilitation
5. Licensed Professional property management
6. Incorporate Transportation Demand Management features as applicable
7. Rehabilitate, repair, and warrant site, building, and landscape improvements for 5 years
8. Comply with minimum FAR requirements of the General Plan

The combination of additional conversion standards with required reports concerning site and building conditions and opportunity for improvement will help the City approve and promote projects that align with the City's General Plan goals for well defined and quality commercial and industrial development.

The CC&R requirements will provide a framework for cohesive condominium development for the entire center or proposed site. The Conditional Use Permit process and the proposed GPA language is intended to provide greater project flexibility in order to consider specific projects and discuss the interests of both an applicant and the City. However, the requirement of a Conditional Use Permit and specific findings will heighten the scrutiny of a project's conformance with the City long term development and use intentions in TOD areas.

Notification:

A newspaper display advertisement was published in the Tri-City Voice on October 28, 2009 for citywide public hearing notice. Direct mail was provided to a list of interested party commercial property owners in the vicinity of the transit stations. One comment letter (Informational #6) was received the day of the Planning Commission hearing that raised some concern with condominium conversions, and the potential for additional regulatory burdens on owner operators and difficulties of developing property in the interim as TOD opportunities materialize.

At its November 12, 2009 hearing the Planning Commission deliberated over the need for controls on condominiums, new requirements for licensed property management, and the five year initial reserve cost implications to an owner/developer (Draft Minutes Informational #7). The Planning Commission then recommended removing the 5-year initial reserve fund requirement as too burdensome on a project. Staff maintains its support for the five year initial reserve as a buyer protection mechanism. The requirements for the CUP approval mandate the site be improved and refurbished to good condition with a warranty of five years on such improvements. The five year reserve funding is intended to provide for unanticipated costs.

ENVIRONMENTAL REVIEW: The project is exempt from the California Environmental Quality Act per guideline 15305, minor alteration of land use limitation, and 15061(b)(3), no potential for significant effect. The project does not cause or allow for development patterns that differ physically from current regulations. Subsequent individual projects would be subject to project specific environmental review.

ENCLOSURES:

Exhibits:

- [Draft Resolution to Amend the General Plan](#)
- [Draft Ordinance to amend the Fremont Municipal Code](#)

Informational Items:

1. [Report and Minutes City Council Meeting Item 5.2 from October 2, 2007](#)
2. [Resolution No. 2007-73](#)
3. [½ mile radius map of BART station sites](#)
4. [City Council Resolution 9931, adopted 6/24/2003, supporting TOD](#)
5. [Copy of Existing Commercial Industrial Condominium Ordinance](#)
6. [Public Comment Letter](#)
7. [Draft Planning Commission Minutes November 12, 2009](#)

RECOMMENDATION:

1. Hold public hearing.
2. Find the proposed project exempt from review under the California Environmental Quality Act Guidelines in that the proposed project has no potential for significant effect and is an alteration of existing land use limitations.
3. Adopt a resolution to amend the General Plan as shown in Exhibit “A.”
4. Waive the full reading and introduce an ordinance to amend Fremont Municipal Code Title VIII, Chapter 2, Section 8-22135-1 as shown in Exhibit “B” regarding commercial, industrial, and non-residential condominiums.
5. Direct the City Attorney to prepare a summary of the ordinance for publication and direct the City Clerk to publish the summary and post a certified copy of the full text of the ordinance in the City Clerk’s Office at least five days before its adoption.

6.1 Report Out from Closed Session of Any Final Action

7.1 EMINENT DOMAIN HEARING - KATO ROAD GRADE SEPARATION PROJECT, PWC 8697

Consideration of Adoption of Resolution of Necessity Authorizing Filing of Eminent Domain Action to Acquire Properties Located at 400-472 Kato Terrace and 48815-48819 Kato Road for the Kato Road Grade Separation Project

Contact Person:

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Executive Summary: The purpose of this report is to recommend that the Council adopt a Resolution of Necessity authorizing the filing of eminent domain actions to acquire property and property interests from two privately owned properties located at 400-472 Kato Terrace and 48815-48819 Kato Road for the Kato Road Grade Separation between Warm Springs Boulevard and Milmont Drive.

BACKGROUND: Freight trains heading to the Milpitas rail yard in Santa Clara County use the Union Pacific Railroad tracks that cross Kato Road at grade level. Constructing a grade separation at this location would increase the safety of this crossing for cars, bicycles and pedestrians. It would also reduce traffic delays and noise caused by train horns and the crossing bells. In 2002, the Santa Clara Valley Transportation Authority (VTA) acquired right-of-way from the Union Pacific Railroad (UPRR) spanning from north of Paseo Padre Parkway in Fremont to beyond Alum Rock Road in San Jose. Securing this vital space allows for a future mass transit system (BART) to be built alongside the remaining railroad tracks, from Warm Springs in Fremont into the cities of Milpitas and North San Jose. To transform this very important transportation corridor for future mass transportation, reduce delays and improve safety, a grade separation is planned where Kato Road crosses the UPRR railroad tracks and VTA's future transit corridor in Fremont.

The proposed project is to construct a grade separation of the UPRR at-grade crossing on Kato Road between Warm Springs Boulevard and Milmont Drive in the Warm Springs District. This separation is created by lowering Kato Road, so that it passes beneath the current ground/street level railroad tracks to separate the freight/transit and cars/pedestrians traffic. The current schedule provides for construction to begin in 2010.

VTA, in partnership with the City of Fremont, is the implementing agency responsible for the design and construction of the \$40.2 million Kato Road Grade Separation Project (Project). VTA funds approximately \$30.2 million of the project, with the remainder to be funded with a future City grant of \$10 million from the State Proposition 1B Highway-Railroad Crossing Safety Account (HRCSA). The ability for the project to receive these grant funds depends on gaining possession of the needed right-of-way by early next year so the construction contract can be awarded by mid-2010 per the grant requirements. To help secure this grant, the City will assist VTA by helping to acquire the needed right of way for the project. Seventeen properties with eight owners will be impacted, including VTA, UPRR, three commercial properties, one residential subdivision, and two Home Owners Associations.

DISCUSSION/ANALYSIS: The proposed project is to improve the safety and efficiency of the Kato Road crossing and prepare it for VTA's future rapid transit (BART) extension from Fremont to San Jose. The completed project will separate the UPRR freight tracks from Kato Road traffic. This project will construct a new two-span double-track railroad bridge structure, and depress Kato Road under the railroad tracks. The bridge structure will be designed at the UPRR's standards, with a minimum 50-year life span, and the intent of the project is that it will be maintained by UPRR. The depressed roadway will be built to City of Fremont standards, and Fremont will own and maintain the roadway.

The scope of work associated with the improvements at the Kato Road crossing include horizontal and vertical modifications, a pump station, drainage design, utility relocations and potential existing utility modifications, stage construction and traffic handling, retaining walls, Deep Soil Mix (DSM) walls, construction area signs, pavement delineation and signing, and right of way acquisition.

After the project is complete, the City and the areas surrounding the project will benefit from reduced traffic back-ups due to trains crossing Kato Road, decreased idling vehicle emissions and commute times, absence of noise from train bells and whistles at the Kato intersection, and improved pedestrian safety and access across the railroad tracks. The region as a whole will benefit in the future from a new mass transportation corridor.

The Project will require rights-of-way from six private property owners, plus VTA and Union Pacific Railroad (UPRR). These acquisitions include: two partial fee acquisitions, eight public utility easements, two ingress and egress easements, six sanitary sewer easements, two storm drain easements, fifteen temporary tieback easements, fourteen temporary construction easements (TCE), and three temporary emergency vehicle access easements within the TCE areas.

On June 23, 2009, the Council gave authorization to staff to make offers, based on the approved appraised values, to the six private property owners and UPRR. The formal written offers to purchase the needed right-of-way were transmitted to the property owners in late July 2009. The offer to UPRR was given to VTA to transmit to UPRR, because VTA is currently in discussions with UPRR regarding the Mission/Warren/Truck Rail Relocation Project and the agencies decided that it was more efficient for all discussions with UPRR to go through VTA. Negotiations have been ongoing with the property owners and their representatives, but to date the City has not been able to reach acquisition agreements with most of the property owners.

On November 3, 2009, the Council held a hearing to adopt a Resolution of Necessity and authorized staff to commence eminent domain proceedings in order to secure an Order of Possession on three properties. This action was necessary to meet the construction contract award schedule of mid-2010. To allow for further negotiations with two property owners, two private properties were removed from the November 3, 2009 agenda. Negotiations have been ongoing with these two property owners and their representatives; however, the City has not been able to reach a settlement with these two property owners.

Discussions will continue with the owners in hopes of negotiating mutually acceptable settlement agreements. However, to meet the construction contract award schedule of mid-2010, it is necessary at this time that the City Council adopt a Resolution of Necessity to acquire the necessary right-of-way.

THE SUBJECT PROPERTIES FOR THE DECEMBER 1, 2009 RESOLUTION: The properties that are the subject of this proposed Resolution of Necessity are as follows:

1. **400-472 Kato Terrace (Walton CWCA Scott Creek 28, LLC)** - This 22.7-acre property is located at the northwest quadrant of Kato Road and Milmont Drive, and is improved with five R&D flex buildings measuring approximately 295,764-s.f. The property's main access is from Kato Terrace, a private street off of Kato Road, which serves all of the improvements, parking lots, and tenant truck wells. There are two existing driveways from Kato Road to the property, one at the far eastern edge of the property, and one at the far western edge.

The Kato Road Grade Separation Project requires the following temporary and permanent easements from the subject property: a temporary construction easement (TCE) 42,159 s.f.; a public utility easement (PUE) 225 s.f.; a temporary tieback easement (TTE) 10,020 s.f.; a storm drain easement (SDE) 5,382 s.f.; and an ingress and egress easement (IEE) 15,150 s.f.. The impacted area is currently improved with one driveway, mature trees, landscape items, and parking spaces. As a result of the project, the property will lose the Kato Road driveway located at the far western edge of the property. These areas are shown on the attached Exhibit A-1 & A-2.

In 1997, an early owner of the property submitted an application for a Tentative Parcel map to develop the property. At that time it was anticipated that Kato Road would be grade separated and the property owner was required to grant to the City an Irrevocable Offer of Dedication (IOD) for public highway purposes of a triangular shaped portion along the Kato Road frontage containing approximately 14,900 s.f. Upon acceptance, the IOD would also relinquish vehicular access along approximately 600 lineal feet adjacent to Kato Road. The Parcel Map was approved in 1998; however, because the final design and funding for the grade separation of Kato Road was not in place, the IOD for the Kato Road right of way was rejected with the City reserving the right to accept the IOD in the future. On June 2, 2009 the City Council accepted the IOD per Resolution 2009-29.

There is no fee acquisition from the property, so the various easement acquisitions do not change the size, configuration, use or utility of the larger parcel in the "After" Condition.

2. **48815 – 48819 Kato Road (Kato Associates)** - This 4.43-acre property is located at the southwest quadrant of the project area, and is improved with a 76,668 square foot warehouse building. The project requires the following interests: a fee acquisition of $\pm 1,731$ square feet for the DSM wall; a $\pm 15,149$ square foot temporary tieback easement to support the DSM wall during construction; a $\pm 5,605$ square foot sanitary sewer easement for service line relocation; and a $\pm 26,968$ square foot temporary construction easement to support the incidental construction activities from the subject property. These areas are shown on the attached Exhibit A-3. Kato Road will be depressed along the frontage of this property, but the road depression will not affect the function of the existing driveway on Kato Road.

On October 28, 2009, counsel for the property owner submitted a letter to the City objecting to the proposed 5,605 square foot sanitary sewer easement on the grounds that it would severely impact the subject property. The sanitary sewer line currently runs through the properties north of Kato Road and then crosses Kato Road to serve properties to the south. When the roadway is

depressed, Union Sanitary District has determined that portions of the line must be relocated to the south of Kato Road to tie into existing lines, and so that it remains at grade level because this sewer flows by gravity. A meeting was held with the property owner at which he proposed the line be installed beneath Kato Road and a pump station be installed, which could eliminate the need for the sanitary sewer easement on the property. This alternative was discussed with the Union Sanitary District, and the District concluded that this option is not feasible from a cost and maintenance prospective, since a pump station would be extremely costly to install and maintain, would not perform as well as the current design for the sanitary sewer system, and would impact additional parcels of land.

To secure the right of way necessary to meet the project construction schedule, staff requests that the City Council consider the adoption of a Resolution of Necessity authorizing the commencement of eminent domain proceedings for the noted properties.

THE PROPOSED RESOLUTION OF NECESSITY: Council adoption of a Resolution of Necessity, by four-fifths vote with the following findings, based on the evidence noted below, is required for the initiation of the proposed eminent domain action:

1. The public interest and necessity require the proposed project.

The need and necessity of the proposed project is consistent with the City's long term General Plan. Traffic study findings conducted prior to design of the project support the grade separation project. With the existing at-grade crossing, train traffic frequently blocks vehicular traffic, causing significant congestion along Kato Road. The project as proposed will eliminate the existing at-grade railroad/street crossing at Kato Road, thus eradicating crossing closures, and train bells and whistles required at grade crossings. The project will result in improved traffic flow on Kato Road and nearby cross-streets, and alleviate traffic congestion in the City. Moreover, the Project will facilitate an important mass transportation corridor for the region.

2. The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

City staff has been studying and working with VTA, Caltrans and ACTA on alternative design configurations for road grade separations as part of the effort to bring BART to Santa Clara County, including a railroad overpass or underpass. Because the BART tracks will be adjacent to existing UPRR tracks from Warm Springs south, the analysis included the treatment of the UPRR tracks. One such alternative considered leaving the street at-grade and depressing the rail tracks. However, this alternative is not viable. UPRR does not support this alternative, and the City has no authority to force UPRR to agree to depressed rails. Even if UPRR were to agree to the depressed rail alternative, the future BART extension tracks would also have to be depressed and the cost of clearance and operational requirements would have significant impacts to the City's operating right-of-way. Elevating the roadway over the rail tracks is also not a viable alternative, since this alternative requires a greater amount of right-of-way for the overpass as compared with the planned underpass, and would impact an even greater number of private property owners.

The Final Environmental Impact Report (issued November 2004) for the BART extension to Milpitas, San Jose and Santa Clara Project, determined that the BART alignment would continue

south of East Warren Avenue at grade to the Milpitas yard, crossing over Kato Road, which will be reconstructed as an underpass.

The project as planned will be a benefit to the residents of the City and the region as a whole. It will relieve traffic congestion, improve automobile, bicycle and pedestrian safety, improve traffic mobility and regional connectivity, eliminate noise from train horns and crossing bells, while impacting only six private property owners and two public property owners.

3. The property described in the Resolution of Necessity is necessary for the proposed project.

The properties to be acquired by eminent domain are located within the project area. As noted, based on the EIR and EIS for the SVRT project, numerous alternatives were studied, and it was determined that the project as planned provided the greatest benefits to the residents of the City and the region as a whole. The noted acquisitions are necessary for the project as planned. The completed project will improve traffic flow and mobility, enhance connectivity of the City of Fremont and the adjacent cities, reduce train noise at the crossing, and improve overall pedestrian and traffic safety in general. Although two private properties will be impacted by the loss of driveway, the City is required by State law to conform the parcels back to the best functional utility so that the property owners are not left with a landlocked or limited access parcel.

4. The offer required by Government Code Section 7267.2 has been made to all owners of record.

Staff has made the required written offers to all owners of record based on approved appraisals of the fair market value of the property and property interests necessary for the project. The offers included a written statement containing detail sufficient to indicate the basis for the offer as required by Government Code section 7267.2, and an informational pamphlet setting out the eminent domain process and the property owners' rights. Written notices of the City's Intent to Pass a Resolution of Necessity, setting forth the date, time and location of the City Council meeting to consider adopting a Resolution of Necessity were mailed to all owners of record on November 13, 2009.

FISCAL IMPACT: None. On November 18, 2008, the City Council authorized the City Manager to execute a Cooperative Agreement with the Santa Clara Valley Transportation Authority to implement the Kato Road Grade Separation Project. The Cooperative Agreement was signed by the City on November 24, 2008. Section I (Responsibilities of VTA), item 18, provides that VTA will pay for all costs associated with the right-of-way acquisitions, including all City costs associated with overhead expenses. The Cooperative Agreement was amended on May 19, 2009, to clarify the sections regarding payment and reimbursement of the City's costs of the right-of-way acquisitions and design coordination.

ENVIRONMENTAL REVIEW: The Kato Road Separation project is Statutorily Exempt from the California Environmental Quality Act because it will eliminate existing railroad grade crossings. A Notice of Exemption for the project was filed by the City with the Alameda County Clerk on November 19, 2008. Staff recommends that the City Council adopt the proposed Resolution of Necessity based on the above findings and information.

ENCLOSURES:

- [Draft Resolution](#)
- [Location Map](#)
- [Exhibits: Aerial Photos with Right of Way Acquisition Areas \(Exhibits A-1, A-2 & A-3\)](#)

RECOMMENDATION:

1. Conduct a hearing
2. Adopt a Resolution of Necessity making the findings, determine that the public interest and necessity require the acquisitions of the subject properties, and authorize the commencement of eminent domain proceedings.

8.1 Council Referrals

8.1.1 COUNCILMEMBER WIECKOWSKI REFERRAL: Develop an Ordinance for City Council Consideration Prohibiting the Use of Polystyrene Foam Disposable Food Packaging.

Direct staff to develop an Ordinance for City Council consideration prohibiting the use of polystyrene foam disposable food packaging and requiring the use of environmentally preferable food packaging by retail food vendors and restaurants effective January 1, 2011.

8.2 Oral Reports on Meetings and Events

ACRONYMS

ABAG.....	Association of Bay Area Governments	FUSD	Fremont Unified School District
ACCMA.....	Alameda County Congestion Management Agency	GIS	Geographic Information System
ACE	Altamont Commuter Express	GPA.....	General Plan Amendment
ACFCD	Alameda County Flood Control District	HARB	Historical Architectural Review Board
ACTA	Alameda County Transportation Authority	HBA	Home Builders Association
ACTIA	Alameda County Transportation Improvement Authority	HRC	Human Relations Commission
ACWD	Alameda County Water District	ICMA	International City/County Management Association
BAAQMD	Bay Area Air Quality Management District	JPA	Joint Powers Authority
BART	Bay Area Rapid Transit District	LLMD	Lighting and Landscaping Maintenance District
BCDC	Bay Conservation & Development Commission	LOCC.....	League of California Cities
BMPs	Best Management Practices	LOS	Level of Service
BMR	Below Market Rate	MOU	Memorandum of Understanding
CALPERS.....	California Public Employees' Retirement System	MTC.....	Metropolitan Transportation Commission
CBD	Central Business District	NEPA	National Environmental Policy Act
CDD.....	Community Development Department	NLC.....	National League of Cities
CC & R's	Covenants, Conditions & Restrictions	NPDES.....	National Pollutant Discharge Elimination System
CDBG	Community Development Block Grant	NPO.....	Neighborhood Preservation Ordinance
CEQA	California Environmental Quality Act	PC.....	Planning Commission
CERT	Community Emergency Response Team	PD	Planned District
CIP	Capital Improvement Program	PUC.....	Public Utilities Commission
CMA	Congestion Management Agency	PVAW	Private Vehicle Accessway
CNG.....	Compressed Natural Gas	PWC.....	Public Works Contract
COF	City of Fremont	RDA	Redevelopment Agency
COPPS	Community Oriented Policing and Public Safety	RFP	Request for Proposals
CSAC.....	California State Association of Counties	RFQ.....	Request for Qualifications
CTC	California Transportation Commission	RHNA	Regional Housing Needs Allocation
dB	Decibel	ROP.....	Regional Occupational Program
DEIR.....	Draft Environmental Impact Report	RRIDRO.....	Residential Rent Increase Dispute Resolution Ordinance
DO	Development Organization	RWQCB	Regional Water Quality Control Board
DU/AC.....	Dwelling Units per Acre	SACNET	Southern Alameda County Narcotics Enforcement Task Force
EBRPD	East Bay Regional Park District	SPAA	Site Plan and Architectural Approval
EDAC	Economic Development Advisory Commission (City)	STIP	State Transportation Improvement Program
EIR.....	Environmental Impact Report (CEQA)	TCRDF.....	Tri-Cities Recycling and Disposal Facility
EIS	Environmental Impact Statement (NEPA)	T&O	Transportation and Operations Department
ERAF	Education Revenue Augmentation Fund	TOD	Transit Oriented Development
EVAW	Emergency Vehicle Accessway	TS/MRF	Transfer Station/Materials Recovery Facility
FAR	Floor Area Ratio	UBC	Uniform Building Code
FEMA.....	Federal Emergency Management Agency	USD.....	Union Sanitary District
FFD.....	Fremont Fire Department	VTa	Santa Clara Valley Transportation Authority
FMC.....	Fremont Municipal Code	WMA	Waste Management Authority
FPD.....	Fremont Police Department	ZTA.....	Zoning Text Amendment
FRC.....	Family Resource Center		

**UPCOMING MEETING AND CHANNEL 27
BROADCAST SCHEDULE**

<i>Date</i>	<i>Time</i>	<i>Meeting Type</i>	<i>Location</i>	<i>Cable Channel 27</i>
December 8, 2009		Cancelled		
December 15, 2009	5:30 p.m.	Work Session	Council Chambers	Live
December 15, 2009	7:00 p.m.	Regular City Council Meeting	Council Chambers	Live
December 16, 2009 – January 11, 2010		Council Recess		
January 5, 2010		Cancelled		
January 12, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
January 19, 2010	TBD	Work Session	Council Chambers	Live
January 26, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 2, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 9, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 16, 2010	TBD	Work Session	Council Chambers	Live
February 23, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 2, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 9, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 16, 2010	TBD	Work Session	Council Chambers	Live
March 23, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 30, 2010 (5 th Tuesday)		No City Council Meeting		